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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/670,854

09/24/2003

Robert Lauter

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EXAMINER

PHILLIPS, CHARLES E

ART UNIT

PAPER NUMBER

3751

MAIL DATE

DELIVERY MODE

02/08/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/670,854

Applicant(s)

LAUTER ET AL.

Examiner

Charles E. Phillips

Art Unit

3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 November 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

The rejection of 1/26/07 is hereby withdrawn as the Saito et al reference was not comparable under 103. An action on the merits follows.

The "Cal Spas" document used previously is not deemed proper as the filing date of 60/332,861 i.e. 11/6/01, predates the earliest date(10/11/02) provided for said document. If applicant concurs an indication of same on the record should be made. An action on the merits of claims 1-3 follows.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nomura in view of Hodak or Farrell.

Nomura discloses a combination "spa" which comprises a tub (#1) having a bottom and a plurality of sidewalls (see figure 1) having an upper edge (see figure 1). Nomura discloses a surface (# 5) with an aperture (see figure 4), The water-tight housing (#21 of Fig. 4) of Nomura comprises an entertainment system (#6), in the form of a TV, that is positioned in alignment with the aperture (see figures 1 and 4). The entertainment system is movable between a first position beneath the surface and a second position above the surface, see paragraphs (0010), (0011), (0013). Further, the housing of Nomura comprises a mechanism (#25) to move the housing from the first and second

positions and a control system (#4) for controlling the mechanism. Nomura further discloses in Fig. 4, a sealing arrangement employing a sealing member 26 (see paragraph (0016)).

Nomura lacks a showing that a cover projects beyond the perimeter of the aperture.

Hodak in Fig. 3 and Farrell in Fig. 4 show a container where a lid 24' and 20 are shown to have a protruding peripheral flange 27' and 34 which would serve as a seal on the upper surface of the container in a manner conventional to many containers in the art such as paint cans and liquid containers. It would have been obvious to the ordinary artisan to provide the former with the flanged arrangement of the latter as both teach waterproof systems. The claim 2 "rib" is seen at 40 of Hodak and Farrell. Claim 3 is met by element 22 of Nomura.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

Claims 1-3 are rejected under 35 U.S.C. 102(b) based upon a public use or sale of the invention. The sales meeting disclosed as occurring on 6/5/2000 is deemed public use or sale.

In the paragraph bridging pages 2-3 of the 11/17/06 paper, it is stated that "Exhibit A is a copy of a brochure illustrating a spa incorporating the claimed features of the present invention". There is also an exhibit labeled "A" which consists of four declarations. There are two "Exhibit B" documents, one is the confidentiality agreement and the other is the printers invoice. Exhibit C is entitled "STS/LSS Technical Training" and is said to have

been printed "on or about November 5, 2000". With respect to these documents and the 10/13/05 papers, the following issues are presented:

1. The disclosures at the June 5, 2000 meeting constitute use and/or sale under 102; counsel argues that at the bottom of page 3 "As explained in paragraph (4), Mr. Valmassoi explains that the prototype did not have the means necessary for raising and lowering the compartments which house the speakers and television set."; however, this substance is not the subject of the instant claims and the joint declaration filed 11/20/06 states "The prototype had three compartments movably mounted in a surface surrounding the upper edge of the tub. The compartments were configured substantially as shown and described in the above-identified patent application. Speakers and a television set were mounted in the compartments. The compartments were capable of being moved vertically between a raised position wherein the screen of the television set could be viewed and the speakers were functional, and a lowered one wherein they were recessed within the surface surrounding the tub. The television and the speakers were not electronically wired, and the operating system for raising and lowering the compartments was not installed, but the prototype construction was otherwise as described in the application and demonstrated the utility and operability of the invention. The purpose of the prototype was to provide a visual demonstration to a selected group of Master Spas sales representatives and dealers of a product offering. The demonstration was planned to be held at the Master Spas headquarters on June 5, 2000. " Notwithstanding the phrase "was planned" of the previous sentence, it is established that the substance of the instant claims was in fact presented at this

meeting. If this meeting was in confidence then copies of the executed confidentiality agreements of all of the thirty attendees must be presented to establish same.

2. The printing of the product brochure "on or about November 5, 2000" as referred to in paragraph one of page 3 of the 11/17/06 arguments constitutes public use absent some showing to the contrary, in that personnel of the printing entity became aware of the invention more than one year prior to filing provisional application 60/332,861 on 11/6/01.

3. A showing of diligence from the meeting date of June 5, 2000 to the filing date of the provisional application must be made.

Curry and Saito et al show other container top sealing arrangements.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles E. Phillips whose telephone number is 571-272-4893. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Huson, can be reached on 571-272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Application/Control Number: 10/670,854
Art Unit: 3751

Page 6


Charles E. Phillips
Primary Examiner